

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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May 27, 2021

**100085** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v CLYDE SCOTT

Reversed and remanded.

Emanuella D. Groves, J., Mary J. Boyle, A.J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *Consecutive sentences; protection of the public from future crime; punishment of the offender; sentence not disproportionate to danger offender poses to public.*

*To impose consecutive sentences, a trial court must find that (1) consecutive sentences are necessary to protect the public from future crime or to punish the offender, (2) consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and (3) at least one of the factors in R.C. 2929.14(C)(4) applies.*

*The trial court must make the requisite findings in support of the imposition of consecutive sentences at the sentencing hearing and incorporate those findings into its sentencing journal entry. In so doing, the trial court must note that it engaged in the analysis, and that it has considered the statutory criteria and specified which of the given bases warrants its decision.*

*In the instant case, the state concedes that the trial court failed to make the specific finding that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public. Our review of the record confirms that the trial court failed to make this specific finding.*

**109128** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v CRONIE W. LLOYD

Affirmed.

Eileen T. Gallagher, J., Anita Laster Mays, P.J., and Mary Eileen Kilbane, J., concur.

**KEY WORDS:** *Juror; peremptory; challenge; due process; impartial; bias; discretion; ineffective; assistance; counsel' prejudice; trial strategy; lesser-included offense; inferior-degree offense; felonious assault; murder; plain error; sufficient; evidence; reasonable doubt; knowingly; serious physical harm.*

*The trial court did not abuse its discretion by excusing a prospective juror for cause. Defense counsel did not render ineffective assistance of counsel by failing to request jury instructions on lesser-included and inferior-degree offenses. The*

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(Case 109128 continued)

**trial court did not commit plain error by failing to sua sponte provide jury instructions on lesser-included and inferior-degree offenses. Defendant's convictions are supported by sufficient evidence.**

**109315** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v BRADLEY DELVALLIE

Vacated and remanded.

Anita Laster Mays, P.J., Larry A. Jones, Sr., J., and Emanuella D. Groves, J., concur.

**KEY WORDS: Reagan Tokes Law; constitutional challenges; ripeness for review; separation of powers doctrine; procedural due process; substantive due process; void-for-vagueness doctrine.**

***The issue is ripe for review. The law is unconstitutional. The law allows the executive branch to act as judge, prosecutor, and jury which violates the separation of powers doctrine. The law is facially void-for vagueness because it: does not provide fair and understandable notice of what behavior is prohibited; gives the Ohio Department of Rehabilitation and Correction unfettered enforcement authority and fails to preclude discriminatory enforcement; and fails to protect the unreasonable violation of constitutionally protected freedoms.***

**109613** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ADOLPH N. GAMBLE

Affirmed.

Sean C. Gallagher, J., Eileen A. Gallagher, J., concurs; Mary J. Boyle, A.J., dissents with separate opinion.

**KEY WORDS: R.C. 2929.144; R.C. 2929.14; Reagan Tokes Law; indefinite non-life felony sentence; ripeness; due process; separation of powers.**

***The statutory sections codified under the Reagan Tokes Law are not unconstitutional, and the facial challenges advanced against the sentence imposed under R.C. 2929.144 are ripe for review in the direct appeal.***

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**109794** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ARMELL WRIGHT

Reversed and remanded.

Mary Eileen Kilbane, J., Larry A. Jones, Sr., P.J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Presentence motion to withdraw guilty plea; hearing; Crim.R. 32.1; abuse of discretion; competence.*

*The trial court abused its discretion when it denied appellant's presentence motion to withdraw his guilty plea without a hearing.*

**109834** PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
SUSAN A. FIGGIE, ET AL. v BETSY FIGGIE, ET AL.

Affirmed.

Emanuella D. Groves, J., Kathleen Ann Keough, P.J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Civ.R. 12(B)(6); motion to dismiss; conversion; trust; shares; redemption; proceeds.*

*Probate court did not err in dismissing appellant's complaint pursuant to Civ.R. 12(B)(6). Probate court did not err in dismissing appellant's conversion claim because the allegations did not meet the elements for a claim of conversion.*

*The elements of conversion are "(1) plaintiff's ownership or right to possession of the property at the time of conversion; (2) defendant's conversion by a wrongful act or disposition of plaintiff's property rights; and (3) damages."*

*The transfer of the appellant's property rights of the CRC shares during the redemption does not amount to conversion, because CRC paid the Harry III Trust for the shares it once held, the Harry III Trust was not dispossessed of its property interest in the CRC shares. In addition, because the Harry III Trust received proceeds from the redemption of the shares, this was not a wrongful control or exercise of dominion over property belonging to another.*

**109839** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
BROADWAY CONCRETE INVESTMENTS LLC v MASONRY CONTRACTING CORP., ET AL.

Dismissed.

Michelle J. Sheehan, J., Anita Laster Mays, P.J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Final appealable order.*

**Civ.R. 54(B) certification demonstrates that the trial court has determined that an order, albeit interlocutory, should be immediately appealable in order to further the efficient administration of justice and to avoid piecemeal litigation or injustice attributable to delayed appeals. Under the circumstances of this case, a review of the merits of the appeal without the bond company being a party in the appeal does not further the efficient administration of justice or avoid piecemeal litigation. The appeal is dismissed for a lack of final appealable order despite the Civ.R. 54(B) certification.**

**109861** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
WELLS FARGO BANK, N.A. v SANDRA ALLEN COIL, AKA, SANDRA COIL, ET AL.

Affirmed.

Larry A. Jones, Sr., P.J., Michelle J. Sheehan, J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Foreclosure; Civ.R. 24(A)(2)/motion to intervene; abuse of discretion.*

**The trial court did not abuse its discretion where it denied proposed intervenor's first motion to intervene. Proposed intervenor failed to attach the necessary pleading to its motion. On its second motion, proposed intervenor did not meet all the necessary requirements pursuant to Civ.R. 24(A)(2). The trial court's denial of proposed intervenor's second motion to intervene was proper.**

**109862** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
TAX EASE OHIO LLC v ADRIAN KEETON, ET AL.

Reversed and remanded.

Kathleen Ann Keough, J., Sean C. Gallagher, P.J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Civ.R. 53; magistrate's decision; objections; timely; COVID-19 pandemic; tolling; administrative orders.*

**Trial court erred in finding defendant's objections to the magistrate's decision untimely when, pursuant to the relevant administrative and tolling orders issued in response to the COVID-19 pandemic, the objections were timely filed.**

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**109910** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
JOHN ZAYICEK v JG3 HOLDINGS, LLC, ET AL.

Affirmed.

Mary J. Boyle, A.J., Anita Laster Mays, J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Motion to stay and compel arbitration; R.C. 2711.02; arbitration clause; scope; breach of contract; limited liability company; member; operating agreement; nonsignatory; estoppel.*

*The trial court did not err in denying appellants' motion to stay proceedings and compel arbitration.*

**109965** COMMON PLEAS COURT F CIVIL C.P.-JUV, DOM, PROBATE  
STATE OF OHIO v RONZELL HAYNESWORTH

Affirmed.

Anita Laster Mays, P.J., Kathleen Ann Keough, J., and Mary Eileen Kilbane, J., concur.

**KEY WORDS:** *Motion to vacate void judgment; res judicata.*

*The trial court did not err or abuse its discretion in dismissing the appellant's motion to vacate a void judgment and sentence without an evidentiary hearing. The trial court has the discretion to hold an evidentiary hearing. The appellant's claims were barred by res judicata. Additionally, the appellant pleaded guilty, and therefore, waived his right to challenge sufficiency of the evidence.*

**109966** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE V.S., ET AL.

Affirmed.

Mary Eileen Kilbane, J., Sean C. Gallagher, P.J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Parental rights; permanent custody; best interests; R.C. 2151.414(C); right to marry; domestic violence; substance abuse; plain error.*

*The juvenile court's consideration of the parents' intent to remain married was appropriate where Father had failed to address his ongoing domestic violence and substance abuse issues. The court's determination that permanent custody of the minor children was in their best interests was supported by competent and credible evidence and was not an abuse of discretion. The court's*

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(Case 109966 continued)

**alleged failure to swear in the guardian ad litem was not plain error.**

**110034** PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE GUARDIANSHIP OF JAMES M. CARNEY, JR.

Affirmed.

Eileen T. Gallagher, J., Mary J. Boyle, A.J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Disqualification; guardianship; witness-advocate rule; Prof.Cond.R. 3.7; incompetent; undue influence; conflict of interest.*

*Trial court properly disqualified attorney pursuant to Prof.Cond.R. 3.7(A) without holding a evidentiary hearing where the attorney was likely to be a necessary witness in the guardianship proceeding and the disqualification did not work a substantial hardship on the client, who was represented by three other lawyers.*

**110068** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV, DOM OR PRO  
STATE OF OHIO v WALTER HARRIS

Affirmed.

Lisa B. Forbes, J., Larry A. Jones, Sr., P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Postconviction relief; res judicata.*

*Defendant's motion for postconviction relief was untimely, because it was filed more than 365 days after his trial transcript was filed in his direct appeal. Additionally, defendant's motion for postconviction relief is barred by the doctrine of res judicata, because he either raised the issue in his direct appeal and it was overruled or he failed to raise the issue in his direct appeal even though he could have.*

**110121** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE P.J.

Affirmed.

Sean C. Gallagher, P.J., Mary Eileen Kilbane, J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Permanent custody; neglect; anger; domestic violence; best interest; case plan; benefit; legal custody; manifest*

(Case 110121 continued)

**weight; competent, credible evidence; R.C. 2151.414(B); R.C. 2151.414(D)(1); R.C. 2151.414(D)(2); R.C. 2151.414(E).**

**Affirmed award of permanent custody to children services agency. The record contained competent, credible evidence from which the juvenile court could have found the essential statutory elements for an award of permanent custody were established, and the juvenile court's decision to grant permanent custody to the agency and the termination of Mother's parental rights were not against the manifest weight of the evidence. In considering whether permanent custody was in the best interest of the child, the juvenile court considered all relevant factors under R.C. 2151.414(D)(1) and found all the factors under R.C. 2151.414(D)(2) applied. Although Mother complied with case plan services, the record demonstrated that she had not benefited from those services. Evidence showed there was repeated neglect of the special-needs child, and valid concerns remained regarding Mother's anger, her failure to accept responsibility for her neglect, and the continued presence of the child's stepfather, with whom there was a history of domestic violence. The juvenile court did not err in denying Mother's request for legal custody.**

**110194** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE S.P., ET AL.

Affirmed.

Larry A. Jones, Sr., J., Anita Laster Mays, P.J., and Eileen T. Gallagher, J., concur.

***KEY WORDS: Ineffective assistance of counsel; hearsay testimony; cross-examination of witness; reconsideration of judgment; motion for permanent custody; best interest of the child.***

***Witness testimony regarding Father's then-most recent criminal case was based on information gathered during the agency's investigation of Father; the agency was concerned about Father's repeated incarceration. Father testified and thus, under Evid.R. 609, was subject to cross-examination about his prior criminal history. Appellant's counsel's decision to not cross-examine the GAL on the admitted report can be considered trial strategy to not bring further attention to Father's situation and will not be second-guessed. Although Father's sentence was modified in his then-most recent criminal case, the trial court reviewed Father's complete criminal history that was extensive, and appellant has failed to show that a motion for reconsideration would have resulted in a different outcome. Appellant's counsel's performance did not fall below a reasonable standard and therefore was not ineffective in his representation of appellant.***

***The juvenile court found competent and convincing evidence that it was in the best interest of the children to grant permanent custody to the agency.***